

§ 400.701

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an eligible crop insurance contract. However, producers will have the potential to receive monetary assistance in defraying the costs of their future premium.

[66 FR 47951, Sept. 17, 2001, as amended at 70 FR 41918, July 20, 2005; 70 FR 44235, Aug. 2, 2005]

§ 400.701 Definitions.

Act. The Federal Crop Insurance Act, as amended (7 U.S.C. 1501 et seq.)

Actuarial documents. The material for the crop or insurance year which is available for public inspection in your agent's office and published on RMA's website at <http://www.rma.usda.gov/>, or a successor website, and which shows available coverage levels, information needed to determine premium rates, premium adjustment percentages, practices, particular types or varieties of the insurable crop or agricultural commodity, insurable acreage or commodities, and other related information regarding crop insurance or other risk management plans of insurance in the county or state.

Actuarially appropriate. Premium rates expected to cover anticipated losses and a reasonable reserve based on valid reasoning, an examination of available risk data, which for new products may be scarce but must still be of sufficient quality and quantity to reasonably determine the anticipated losses, or thorough knowledge or experience of the expected value of future costs associated with the risk to be transferred.

Administrative and Operating (A&O) costs. The costs of the approved insurance provider, and any MGA and TPA, which are directly related to the delivery, loss adjustment and administration of the Federal crop insurance program. Costs associated with the sale or service of catastrophic risk protection (CAT) eligible crop insurance contracts in an amount equal to the loss adjustment expense subsidy for CAT eligible crop insurance contracts, ceding commission received for ceding any portion of the risk associated with any eligible crop insurance contract authorized under the authority of the Act with a reinsurer, and payments for the purchase of reinsurance and related credits are not considered as A&O costs.

Administrative and Operating (A&O) subsidy. The subsidy for the administrative and operating expenses authorized by the Act and paid by FCIC on behalf of the producer to the approved insurance provider. Loss adjustment expense reimbursement paid by FCIC for CAT eligible crop insurance contracts, and any ceding commission received for ceding any portion of the risk associated with any eligible crop insurance contract authorized under the authority of the Act with a reinsurer are not considered as A&O subsidy.

Agent. An individual licensed by the State in which an eligible crop insurance contract is sold and serviced for the reinsurance year, and who is employed by, or under contract with, the approved insurance provider, or its designee, to sell and service such eligible crop insurance contracts.

Applicant. Any person or entity that submits a policy, plan of insurance, provisions of a policy or plan of insurance, or rates of premium to the Board for approval under section 508(h) of the Act.

Approved insurance provider. A private insurance company that has been approved by FCIC to provide insurance coverage to producers participating in programs authorized by the Act.

Approved procedures. The applicable handbooks, manuals, memoranda, bulletins or other directives issued by RMA or the Board. For purposes of §§ 400.714 through 400.722 only, approved procedures include all provisions of the SRA.

Board. The Board of Directors of FCIC.

Compensation. The total amount of any guaranteed salary or payment, commission, or anything that has a quantifiable value or benefit that is not contingent on the existence of an underwriting gain of the approved insurance provider, including, but not limited to, the payment of health or life insurance, deferred compensation (including qualified and unqualified), finders fees, retainers, trip or travel expenses, dues or other membership fees, the use of vehicles, office space, equipment, staff or administrative support paid by the approved insurance provider or its contractor either directly or indirectly through a third party.

Payments conditioned upon something other than the underwriting gains of the approved insurance provider are considered as compensation, such as bonuses or other conditional payments or commission based upon whether an agent timely turns in applications, production reports or acreage reports, etc. A profit sharing arrangement will be considered compensation unless and only to the extent that:

(1) Such profit sharing arrangement contains a provision that would require a pro rata reduction in the amount or percentage of profit contained in such arrangement if the total amount of underwriting gain paid by FCIC for the applicable reinsurance year is not sufficient to cover the amount or percentage of profit; or

(2) At least one of the required triggers for the payment under the profit sharing arrangement is that the approved insurance provider receives from FCIC an underwriting gain for its whole book of Federally reinsured crop insurance business for the applicable reinsurance year.

Complete submission. A submission determined by the Board to contain all necessary and appropriate documentation in accordance with § 400.705 and is of sufficient quality to conduct a meaningful review.

Complexity. Complexity takes into consideration such factors as originality, the number and type of factual determinations necessary to establish insurable interest, evaluate risk, and determine whether an indemnity is payable, the number of commodities and areas to which the product is applicable, the rating methodology, the number of risks covered, unique policy provisions or endorsements, the delivery process of the submission, and the process of creating rules, policy terms and conditions, underwriting procedures, rating methodologies, administrative and operating procedures, and supporting materials.

Development. The process of drafting rules, new policy provisions, pricing and rating methodologies, administrative and operating procedures, systems and software, supporting materials, and documentation necessary to create and implement a proposed policy or coverage.

Disinterested third party. A person who does not have any familial relationship (parents, brothers, sisters, children, spouse, grandchildren, aunts, uncles, nieces, nephews, first cousins, or grandparents, related by blood, adoption or marriage, are considered to have a familial relationship) with anyone employed or contracted by the applicant or who will not benefit financially from the approval of the submission.

Efficiency. Monetary savings realized when the approved insurance provider's A&O costs are less than the amount of the A&O subsidy paid by FCIC. If the approved insurance provider is reducing agent compensation as a means to achieve an efficiency, not all of the efficiency can come from such reduction in agent compensation. Efficiency does not include any actual or projected underwriting gain earned from the SRA, private reinsurance revenues or expenses, or any investment returns on the approved insurance provider's reserves.

Eligible crop insurance contract. An insurance contract for an agricultural commodity authorized by the Act and approved by FCIC, with terms and conditions in effect as of the applicable contract change date, which is sold and serviced consistent with the Act, FCIC regulations, and approved procedures having a sales closing date within the reinsurance year, and with an eligible producer.

Eligible producer. A person who has an insurable interest in an agricultural commodity, who has not been determined ineligible to participate in the Federal crop insurance program, and who possesses a United States issued social security number (SSN), employer identification number (EIN), or such other identification as required by RMA.

Endorsement. A document that amends a policy reinsured under the Act in a manner that supplements or amends the insurance coverage provided by that policy.

FCIC. The Federal Crop Insurance Corporation, a wholly owned government corporation within USDA.

Maintenance. For the purposes of this subpart only, the process of continual support and improvement, as needed,

for a policy or plan of insurance, including the periodic review of setting prices, updating premium rates or the rating methodology, updating or modifying policy terms and conditions, and any other actions necessary to provide adequate and meaningful protection for producers, ensure actuarial soundness, or to respond to statutory or regulatory changes.

Maintenance costs. Specific expenses associated with the maintenance of a policy during the maintenance period.

Maintenance period. A period of time that begins on the date the Board approves the submission for maintenance and ends on the date that is not more than four reinsurance years after such approval.

Manager. The Manager of FCIC.

Managing General Agent (MGA). An entity that meets the definition of managing general agent under the laws of the State in which such entity is incorporated and in every other State in which it operates, or in the absence of such State law or regulation, meets the definition of a managing general agent or agency in the National Association of Insurance Commissioners Managing General Agents Act, or successor Act.

Marketable. A determination by the Board that a sufficient number of producers will purchase the product and approved insurance providers will sell the product to make it economical, based on credible evidence provided by the applicant and any other relevant information.

Marketing plan. A detailed, written plan that identifies, at a minimum, the expected number of potential buyers, premium, liability, a prescribed insurance year cycle, the data upon which such information is based, such data may include, but is not limited to, focus group results, market research studies, qualitative market estimates, effects upon the delivery system or ancillary participants, correspondence from producers expressing the need for such policy or plan of insurance, responses from a reasonable representative cross-section of producers to be effected by the policy or plan of insurance demonstrating the number of producers likely interested in purchasing the product, and a commitment from at least one approved insurance pro-

vider to sell and support such a policy or plan of insurance.

Multiple peril crop insurance (MPCI). All insurance policies reinsured by FCIC that offers coverage for loss of production, loss of revenue, or both.

National Agricultural Statistics Service (NASS). An agency of the United States Department of Agriculture, or a successor agency.

Nonreinsured supplemental policy (NRS). A policy, endorsement or other risk management tool that is not reinsured under the Act, or has not been submitted to FCIC under section 508(h) of the Act, that offers additional coverage, other than loss related to hail, to a policy or plan of insurance that is reinsured by FCIC.

Non-significant changes. Minor changes to the policy or plan of insurance, such as technical corrections, that do not affect the rating or pricing methodologies, the amount of subsidy owed, the amount or type of coverage, the interests of producers, FCIC's reinsurance risk, or any condition that does not affect liability or the amount of loss to be paid under the policy. Statutory or regulatory requirements are included in this category regardless of impact.

Plan of insurance. A class of policies, such as MPCI or Group Risk Plan of Insurance, that offers a specific type of coverage to one or more agricultural commodities.

Plan of Operations. The documents and information the approved insurance provider must submit in accordance with section IV.F.2. and Appendix II of the SRA and applicable approved procedures.

Policy. A contract for insurance that includes an accepted application, Basic Provisions, applicable Commodity Provisions, other applicable options and endorsements, the Special Provisions, related materials, and the applicable regulations published in 7 CFR chapter IV.

Premium discount. A payment made by the approved insurance provider to the policyholder to help defray the cost of premium, in an amount equal to the dollar amount or corresponding percentage of net book premium approved by RMA, as authorized by section 508(e)(3) of the Act.

Profit sharing arrangement. An arrangement to make a payment to an employee, agent, loss adjuster or other contractor conditioned upon whether the approved insurance provider receives an underwriting gain on the crop insurance business. Payments made to commercial reinsurers or ceding commissions paid to the approved insurance provider for the reinsurance year for the crop insurance book of business are not considered as profit sharing arrangements for the purposes of determining A&O costs or A&O subsidy.

Reduction in service. When the approved insurance provider, agent and loss adjuster, or any other contractor or employee of the approved insurance provider that assists in or provides any service for a Federally reinsured eligible crop insurance contract, sells, services or administers such eligible crop insurance contracts at a level of service less than that required under all applicable regulations and approved procedures. A violation of a provision in an approved procedure will be considered to be a reduction in service.

Rate of premium. The dollar amount per insured unit or percentage rate per dollar of liability that is needed to pay anticipated losses and provide a reasonable reserve.

Related material. The actuarial documents for the insured agricultural commodity and any underwriting or loss adjustment manual, handbook, form or other information needed to administer the policy.

Research. For the purposes of development, the gathering of information related to: Producer needs and interests; the marketability of the policy or plan of insurance; the appropriate policy terms, premium rates, price elections, administrative and operating procedures, supporting materials, and the documentation, systems and software necessary to implement a policy or plan of insurance. Gathering of information to determine whether it is feasible to expand a policy or plan of insurance to a new area or to cover a new commodity under the same policy terms and conditions, price, and premium rates is not considered research.

Research and development costs. Specific expenses incurred and directly related to the research and development

of a submission, as initially approved by the Board.

Risk Management Agency (RMA). An agency of USDA responsible for the administration of all programs authorized under the Act and other authorities.

Risk subsidy. The portion of the approved premium paid by FCIC on behalf of the insured person.

Sales closing date. The final calendar date on which an approved insurance provider may accept an application by a producer for insurance.

Secretary. The Secretary of the United States Department of Agriculture.

Significant change. Any change to the policy or plan of insurance that may affect the rating and pricing methodologies, the amount of subsidy owed, the amount of coverage, the interests of producers, FCIC's reinsurance risk, or any condition that may affect liability or the amount of loss to be paid under the policy.

Special Provisions. The part of the policy that contains specific provisions of insurance for each insured commodity that may vary by geographic area.

Standard Reinsurance Agreement (SRA). The reinsurance agreement between FCIC and the approved insurance provider, under which the approved insurance provider is authorized to sell and service the eligible crop insurance contracts for which the premium discount is proposed. All references to the SRA will also include any other reinsurance agreements entered into with FCIC, including the Livestock Price Reinsurance Agreement, unless otherwise stated in such reinsurance agreement.

Submission. A policy, plan of insurance, provision of a policy or plan of insurance, or rates of premium provided by an applicant to FCIC in accordance with the requirements of this subpart.

Third Party Administrator (TPA). A person or organization that processes claims or performs other administrative services and holds licenses, as applicable, in States in which services are provided with respect to the Federal crop insurance business in accordance with a service contract or an affiliate or any other type of relationship.

Underwriting gain. For the purposes of the premium reduction plan, the amount of gains paid under section II.B.10. of the SRA less any amounts paid from such gains, including but not limited to payments to commercial reinsurers, taxes, licensing fees, payments to parent companies or subsidiaries, etc., and any costs incurred by the approved insurance provider in excess of the A&O subsidy related to the delivery, service, loss adjustment and administration of the Federal crop insurance program.

Unfair discrimination. An approved insurance provider's implementation of the premium reduction plan will be considered unfairly discriminatory to a producer if the availability of eligible crop insurance contracts sold under the premium reduction plan, or the percentage of net book premium upon which the premium discount is paid, is based on the loss history of the producer, the amount of premium earned under the eligible crop insurance contract, the producer's size of the operation or number of acres to be insured, or precludes in any manner producers from participating in the premium reduction plan in a State where an approved insurance provider is eligible for the opportunity to offer a premium reduction plan.

USDA. The United States Department of Agriculture.

User fees. Fees, approved by the Board, that can be charged to approved insurance providers for use of a policy or plan of insurance.

[66 FR 47951, Sept. 17, 2001, as amended at 70 FR 41918, July 20, 2005; 70 FR 44235, Aug. 2, 2005]

§ 400.702 Confidentiality of submission and duration of confidentiality.

(a) Prior to approval by the Board, any submission made to the Board under section 508(h) of the Act, including any information generated from the submission, will be considered confidential commercial or financial information for purposes of 5 U.S.C. 552(b)(4) and will not be released by FCIC to the public, unless the applicant authorizes such release in writing.

(b) Once the Board approves a submission, all information provided with the submission, or generated in the ap-

proval process, may be released to the public, including any mathematical modeling and data, unless it remains confidential business information under 5 U.S.C. 552(b).

(c) Any submission disapproved by the Board will remain confidential commercial or financial information in accordance with 5 U.S.C. 552(b) and no information related to such submission will be released by FCIC unless authorized in writing by the applicant.

(d) In the submission, the applicant must state if the name of the submission may be used in Board documents including but not limited to the agenda, minutes, and Board memoranda. The applicant cannot use false names to mislead the public regarding the nature of the submission. If permission is not given to use the name of the submission, the submission will simply be referred to as a "Section 508(h) submission."

[66 FR 47951, Sept. 17, 2001, as amended at 70 FR 44236, Aug. 2, 2005]

§ 400.703 Timing of submission.

(a) A submission may only be provided to FCIC, in either a hard copy or electronic format, during the first 5 business days of January, April, July, and October.

(b) Any submission not provided within the first 5 business days of a month stated in paragraph (a) of this section, will be considered to have been provided the next month stated in paragraph (a). For example, if an applicant provides a submission on January 10, it will be considered to have been received on April 1.

(c) Any submission must be provided to the Deputy Administrator, Research and Development (or any successor), Risk Management Agency, 6501 Beacon Drive, Stop 0812, Kansas City, MO 64133-4676, not later than 240 days prior to the earliest proposed sales closing date to be considered for sale in the requested crop year.

(d) The Board, or RMA if authorized by the Board, shall determine when sales can begin for a submission approved by the Board.

[70 FR 44236, Aug. 2, 2005]